

REMARKS

Applicant has included a Request for Continued Examination to allow the examiner to consider references submitted in the enclosed Information Disclosure Statement, discussed below.

Applicant has amended the specification to reference designations and replace them with "(not shown)" since the attacking computer and the ISP are not shown nor are they needed to be shown in FIG. 1.

The examiner rejected claims 1-32 under 35 U.S.C. 102(e) as being anticipated by US patent application, number 200210035683 A1 Kaashoek et al., hereinafter '683.

The examiner rejected claims 1-32 under 35 U.S.C. 102(e) as being anticipated by U.S. 200210032774 A1.

The examiner rejected claims 1-32 under 35 U.S.C. 102(e) as being anticipated by U.S. 200210032880 A1.

The specific rejections are set forth in the Examiner's action.

Claim 1 calls for a monitoring device *** comprising a plurality of probe devices that are disposed to collect statistical information on packets that are sent over links that couple the network to the data center and a cluster head coupled to each of the plurality of probe devices, the cluster head receiving collected statistical information from the probe devices and determining from the collected information whether the data center is under a denial of service attack.

In response to Applicant's prior Reply, the examiner contends that:

Applicant's arguments filed 12/22/04 have been fully considered but they are not persuasive. Applicant remarks that the prior arts fail to teach a number of features: such as a cluster head, links different network that is being monitored/victim center or networks, packets transmitted over links, and additionally the previously features of a monitoring device, a plurality of probes collecting statistical information from data packets on a network, cluster heads coupled to said probes, and determining whether there is a denial of service attack on the data center. The examiner does not concur, applicant is reminded that the

cluster head to which he is purporting that there is a structural difference has been depicted as a black box of figure 3.

Applicant strongly disagrees. The cluster head depicted in FIG. 3 is described at least in FIGS. 3, 5 and 6A-6B. Claim 1 recites the features of the cluster head which Applicant considers are needed to distinguish the cluster head over the cited references namely, that the cluster head is "coupled to each of the plurality of probe devices" and the cluster head "receiving collected statistical information from the probe devices." The cluster head includes "determining from the collected information whether the data center is under attack. The probe devices are disposed to collect statistical information on packets that are sent over links that couple the network to the data center.

Accordingly, not only is a structural difference present in the cluster head, as described, but other structural differences are provided by the arrangement of the probes and so forth as recited in the claim 1.

It is clear that these features are not shown in the publications and that these features are claimed structural differences. The publications describe a gateway and data collectors. The gateway and data collectors however do not have the features of a plurality of probe devices disposed to collect statistical information on packets sent over links that couple the network to the data center and a cluster head coupled to each of the plurality of probe devices. In the publications, the data collectors are coupled via a redundant network, to a central control center.

Therefore, the publications neither describe nor suggest the invention of claim 1, at least for the reasons that the publications do not suggest a plurality of probe devices disposed to collect statistical information on packets sent over links that couple the network to the data center and a cluster head coupled to each of the plurality of probe devices ***.

Claim 3

Instant claim 3 recites that the cluster head further includes a communication process that communicates statistics collected in the probe devices with a control center. The control center is distinct from the cluster head in the instant claims and application and that of the publications.

Therefore, the publications neither describe nor suggest the invention of claim 3, at least for the reasons that, the publications do not suggest a plurality of probe devices disposed to collect statistical information on packets sent over links that couple the network to the data center and a cluster head coupled to each of the plurality of probe devices and that the cluster head further includes a communication process that communicates statistics collected in the probe devices with a control center.

Applicant's comments on the examiner's remarks

In the examiner's remarks, the examiner also stated that:

The aspects of a redundant network is also taught in the prior art, see your remarks on page 9, regarding the publications and its functionality.

In the references, the "redundant network" is taught to connect the gateways and data collectors to the control center. In contrast, the cluster head in the instant case, not the probes, is connected to the control center by the redundant network.

In the examiner's remarks, the examiner also stated that:

Likewise, the probes being disposed to collect statistical information, is precisely the function that probes perform on data packets.

In this observation, the examiner fails to give patentable weight to all of the limitations in the claims. Specifically, the examiner fails to show where the references teach the structural limitation of the probes monitoring the links between the data center and the network.

In the examiner's remarks, the examiner also stated that:

The examiner would like to indicate that the two networks in which the inventions are to be used, '974 and the prior art are structurally the identical.

To the extent Applicant understands this comment with respect to certain of Applicant's claims, e.g., claims 8 and 9, in the instant case there are 3 networks, the network being monitored, the network on which the probes and cluster communicate, and the network that the

cluster head and control center communicate. The references do not show this arrangement. For the claims reciting two networks, e.g., claim 2 there is network being monitored (which is disclosed in both references) and a dedicated, private network that is a different network from the network being monitored (which is disclosed in the instant case but not the references, since in the instant case the private network couples the cluster head to the plurality of probe devices).

Accordingly, the claims are allowable over the references.

The examiner provisionally rejected claims 1, 4, 8-10, 13, and 16, under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 3-4, 6-8, 12-15, 17, and 26-27 of co-pending Application No. US 200210035683 A1, hereinafter '683.

This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

This rejection is improper since the claims are not identical nor do the claims share the same wording.

In the alternative, the examiner provisionally rejected claims 1, 4, 8-10, 13, and 16, under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-4, 6-8, 12-15, 17, and 26-27 of co-pending Application No. US 200210035683 A1, hereinafter '683. The examiner stated:

Although the conflicting claims are not identical, they are not patentably distinct from each other because, the monitoring devices and/or probe or plurality of probes devices are monitors that are statistical collectors in both applications. Similarly, the cluster heads are in fact the controllers/centers for the monitor/probes in both applications. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of US application '683, by labeling the cluster heads as controllers/centers, and the probe devices/monitors as statistical collectors/monitors as recited in the disclosure. One of ordinary skill in the art would have been motivated to perform such a modification because it involves only the aspect of labeling the functions of the device and not modifying its structure. One of ordinary skill in the art would have seen this as an obvious expedient to renaming the function of the device/apparatus/system, while retaining the original functions.

The examiner seems to contend that the only distinction between the claims of the instant case and the claims of the '683 application is a "labeling" convention. This is in error. The

examiner fails to show where the structural differences pointed out by Applicant are found in the claims of '683 application. Where a patent to issue on the claims of this application, it would not preclude one from practicing the invention, as in the claims of the '683 application. This conclusion follows because the monitoring devices in the claims of '683 are disposed at a plurality of points in the network, whereas "the plurality of probes devices" are disposed to monitor links from the network to the data center. While both devices may be monitors, "that are statistical collectors in both applications," is immaterial, since the probes and the monitors are arranged in different manners and perform different purposes in the '683 and instant case. Similarly, "the cluster heads" of the present case are not "controllers/centers for the monitor/probes in both applications." The cluster heads interface with the probes and the control center (Claim 3) in the instant case, whereas in '683 application the control center is coupled to the monitors that are disposed in the network.

The examiner concludes that "It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of US application '683, by labeling the cluster heads as controllers/centers, and the probe devices/monitors as statistical collectors/monitors as recited in the disclosure." The motivation offered by the examiner is "because it involves only the aspect of labeling the functions of the device and not modifying its structure."

Again, the examiner fails to address the aspects of the connections of the probes and the cluster head with each other and with links in the arrangement of claim 1. The distinctions between claims of the instant case and the '683 application are not mere labels. The examiner improperly equates the "gateway/control center" teachings of the '683 application to "probe/clusterhead" teachings of the instant case, despite the structural differences as recited in the claims where the '683 application has "monitors disposed at a plurality of points in the network," while the instant is local on a set of links into a datacenter.

Applicant has enclosed an Information Disclosure Statement. Applicant contends that the claims are allowable over the art in the IDS and the art of record. Accordingly, allowance of the application is requested.

Applicant : Massimiliano Antonio Poletto et al.
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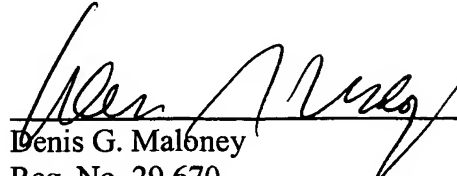
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Respectfully submitted,

Date: _____

7/22/08



Denis G. Maloney
Reg. No. 29,670

Fish & Richardson P.C.
225 Franklin St.
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

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